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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 211.

HENRIETTA S. CHRISTOPHER ET AL., PLAINTIFFS IN ERROR,

vs.

JOSEPH W. NORVELL, RECEIVER, &c.

BRIEF FOR DEFENDANT IN ERROR.

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(19,679.)

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STATEMENT.

The defendant in error, Joseph W. Norvell, as receiver of the First National Bank of Florida, brought this action at law in the circuit court of the United States for the southern district of Florida against the plaintiffs in error, defendants below, Henrietta S. Christopher and John G. Christopher, her husband. The case was tried in the lower court, without a jury, and by the court on written stipulation (page 10 of record). The facts are given on pages 18 to 23 of record, and briefly they are: Plaintiff in error Henrietta S. Christopher became the owner of fifteen (15) shares of stock in the First National Bank of Florida, November 15, 1887, by will of her

father, and her attorney procured the transfer of the stock to her and received certificate for the shares November 17, 1887, and delivered the same to her, and she still holds the same; that she drew dividends thereon as long as the bank paid dividends, to and including February, 1896; that the books of the bank show her to be a stockholder and that dividends were paid to her direct, the same as any other stockholder; that on February 23, 1894, she joined the other stockholders in a written application for "amendment to the articles of association" of said bank; that on March 14, 1903, the bank failed, and defendant in error was appointed its receiver, and on April 1, 1903, the Comptroller of the Currency made and ordered an assessment on all the stockholders, in pursuance of sections 5151 and 5134, Revised Statutes, and notice thereof was sent to said Henrietta S. Christopher and she refused to pay, and this suit was brought against her, and her husband, John G. Christopher, was joined as a defendant by the receiver of the bank.

The declaration shows the said Henrietta S. Christopher to be the wife of John G. Christopher. Demurrer was filed to it on that ground. The demurrer was overruled. Defendants pleaded first never indebted, then setting up the coverture of Mrs. Christopher, and by the fourth plea denying that Mrs. Christopher was ever a shareholder. Plaintiff demurred to all the pleas except the first. This demurrer was sustained, except as to the fourth plea. Plaintiff then joined issue on the first and fourth pleas and proceeded to trial. The demurrer to the pleas raised the same question as the demurrer to the declaration, to wit, whether or not the coverture of Mrs. Christopher relieved or exempted her from all liability in an action of this kind to enforce the assessment of the Comptroller. The fourth plea denied that Mrs. Christopher ever was a shareholder in the bank, "she being a married woman." It apparently gave as a reason for the averment that she was a married woman, and hence it was demurred to, but the circuit court held the averment presented a material, issuable

fact, and overruled the demurrer, and so issue was joined on that plea. A jury was waived, and Judge Locke found and rendered judgment for the plaintiff (p. 11). This judgment was confirmed by the circuit court of appeals (p. 31). Defendants assign error.

To argue each assignment of error separately would necessitate repetition. The sole question presented by the record is as to the rights and liabilities of a married woman who owns stock in a national bank in Florida which fails.

All of the assignments of error may be condensed and the whole discussion may be limited to the following:

Plaintiffs in error, defendants below, contend that a married woman in Florida cannot be a shareholder in a national bank, and she cannot be sued at law, and no judgment at law can be recovered against her, and that, although shares of stock in a national bank may be given to her and certificates may be issued to her, and she receive and accept the same, and receive and accept dividends paid thereon, and join in a petition with other stockholders for an amendment of the charter of the bank, yet, when that bank fails and the Comptroller makes an assessment against all the stockholders, including her, which she refuses to pay, she can rely upon her coverture, deny liability, because under the laws of Florida she cannot contract as if she were sole, and insist that she cannot be sued at law, and that no judgment at law can be recovered and entered against her, and no judgment at law can be enforced against her or her property in Florida.

The foregoing presents the whole question involved in all the assignments of error and brought up by this record.

ARGUMENT.

I.

WE CONTEND THAT THE LIABILITY OF A MARRIED WOMAN TO AN ASSESSMENT BY THE COMPTROLLER IN SUCH CASE IS THE SAME IN FLORIDA AS IN EVERY OTHER STATE, INCLUDING THE DISTRICT OF COLUMBIA.

We believe her liability is to be determined by the national banking laws of Congress and not by local or State laws. The Constitution of the United States vests Congress with the power, and Congress has undertaken to deal with the whole subject of national banks, and all shareholders are treated alike, having the same rights and the same liabilities. No distinction is made of any character. If any one is capable of owning such property as stock in a national bank, such person, white or black, male or female, married or single, must stand precisely on the same footing. It is not insisted and cannot be shown that a married woman is incapable of owning such property under the constitution and laws of Florida. If there is any kind of property a married woman may not have, acquire by gift, or purchase and own in Florida, it would be very new and interesting information to have it pointed out. If there is any species of property a married woman cannot acquire and own in Florida, it has never been discovered, so far as we are advised. There is, sometime, difficulty met in getting property away from her, but we have yet to learn of any trouble about giving it to her or vesting her with absolute ownership of any and every kind of property, and without the intervention of a trustee or other fiduciary. If a married woman may become the possessor and owner of shares in a national bank, then she may become a shareholder. If she becomes a shareholder, the acts of Congress make her liable as such. Otherwise we have the pecul-

iar spectacle, which shocks the conscience, of a shareholder in a national bank who is entitled to all the benefits, dividends, rights and privileges of the other shareholders, but can disclaim and prevent the enforcement of the obligations and liabilities which rest on the other shareholders, not only as against the bank, but as against the creditors as well. If this be sound, we may expect a bargain day rush for stock in national banks by married women in Florida. We may also expect, when and if such banks become insolvent, to find that the shares are practically all held by married women, and if plaintiffs in error succeed in their contention, we will also find that depositors and other creditors of such associations will find that one security they relied on, to wit, shareholders' liability to the amount of the capital of the bank, has vanished into thin air. Depositors cannot, surely, be expected to watch every transfer of stock on the books of the bank in order to keep posted about whether the stock is held "solely for revenue" to the owners, without even "incidental protection" to creditors. Depositors have a right to rely upon the statute and the provisions made for their security.

II.

WITHOUT ADMITTING THAT THE CONSTITUTION AND LAWS OF FLORIDA AFFECT THE QUESTION, WE CLAIM THAT A MARRIED WOMAN IS UNDER NO DISABILITY, SO FAR AS HER RIGHT TO OWN NATIONAL BANK STOCK IS CONCERNED, IN SAID STATE.

The Constitution expressly provides that "all property, real and personal, of a wife, owned by her before marriage, or lawfully acquired afterwards by gift, devise, bequest, descent or purchase, shall be her separate property, and the same shall not be liable for the debts of her husband without her consent, given by some instrument in writing, executed according to the law respecting conveyances by married women" (art. XI, sec. 1).

Under section 2 of this article a married woman's separate property is made chargeable in equity with the price of any property purchased by her.

Hall *vs.* Meinhard Bros. & Co., 34 Fla., 607.

And in reference to this provision, the supreme court of Florida says: "The manifest purpose of the convention was to provide for and regulate in the original law not only the right of married women to acquire and hold property, but," etc. * * * and "the second section regulates the right to subject, in equity, a married woman's separate real and personal property to the payments of debts or obligations contracted by her in reference thereto."

Hall *vs.* Einstein, 34 Fla., 602.

Any gift of personalty to a married woman is presumed to be her separate statutory property.

Alston *vs.* Rawles, 13 Fla., 117.

"A married woman may dispose of her property, both real and personal, by last will and testament, in the same manner as if she were not married."

Sec. 1793, R. S. Fla.

She can institute claim proceedings to recover her property.

Sec. 1197, R. S.

She can replevin it by proceedings at law.

See secs. 2069, 2070, R. S. Fla.

She is capable of acquiring, owning and holding real and personal property of every description.

She is not prohibited by any law of Florida from being a shareholder in a national bank or from owning stock in a national bank.

III.

IF THE DEFENDANT HENRIETTA S. CHRISTOPHER IS NOT INCAPACITATED FROM BECOMING THE OWNER OF THE STOCK, IF THE LAWS OF FLORIDA PERMIT A MARRIED WOMAN TO OWN SHARES IN A NATIONAL BANK, SHE BECAME A SHAREHOLDER, AND IS SUCH TODAY, AND AS SUCH IS LIABLE TO ASSESSMENT UNDER THE NATIONAL BANKING LAWS.

It must be conceded that a married woman may own and hold stock in a national bank in Florida, but counsel for plaintiff in error insists that the only remedy against her is by bill in equity under the constitution and laws of Florida. Counsel overlooks the principle that if plaintiff in error can own and hold such stock, her liability and the means of enforcing it *are controlled by the laws of the United States and not by those of the State.* She became liable as a shareholder under the laws of the United States, and the remedy of the receiver is an action at law as in the case of any other shareholder.

Keyser *vs.* Hitz, 133 U. S., 138–150.
In re First National Bank of St. Albans, 49 Fed., 120.
Bandy *vs.* Cocke, 128 U. S., 138.
Zane on Banks and Banking, p. 77 and p. 674.
Sec. 5151, R. S. U. S.
See also Lamoser *vs.* Keeler, 123 U. S., 376.

The remedy is at law.
Kennedy *vs.* Gibson, 8 Wall., 498.

We may mention here in passing that the United States court has jurisdiction herein without regard to the amount involved.
Brown *vs.* Smith, 88 Fed., 565.

Also, though no assignment raises the question, it may be referred to in brief, and we note that it is customary to join

husband and wife in such action, but if this is considered improper, the court can order the names of misjoined defendants struck out.

Sec. 936, R. S. Florida.

The supreme court of Florida held in Lignoski *vs.* Bruce, 8 Fla., 269, that the husband must be coplaintiff in a suit at law for the recovery of the wife's separate property.

The common-law rule is the husband must be joined.

29 Florida, 927.

The same case holds a married woman may be sued at law for her tort. If the judgment should be entered against the wife alone, it can be so modified without being reversed.

Mrs. Christopher is a shareholder and liable to the assessment and to be sued therefor at law.

Revised Statutes of United States provides, section 5139: "The capital stock of each association shall be divided into shares of one hundred dollars each, and be deemed personal property, and transferable on the books of the association in such manner as may be prescribed in the by-laws or articles of association. Every person becoming a shareholder by such transfer shall, in proportion to his shares, succeed to all the rights and liabilities of the prior holder of such shares; and no change shall be made in the articles of association by which the rights, remedies or security of the existing creditors of the association shall be impaired,". * * * and

Sec. 5151. "The shareholders of every national banking association shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such association to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares," etc.

The Comptroller of the Currency has constitutionally the power to appoint a receiver for a defaulting or insolvent national bank, and to call for a ratable assessment upon the stockholders, without a previous judicial ascertainment of

the necessity for the appointment of the receiver and of the existence of the liabilities of the bank.

Bushnell *vs.* Leland, 164 U. S., 684, 685.

This statutory liability is not in favor of the bank, but of its creditors.

Wickham *vs.* Hull (Iowa), 71 N. W. Rep., 352–353.

Irons *vs.* Manufacturers' Bank, 21 Fed. Rep., 197.

The general rule is the owner of the stock, in whose name it stands on the books, is and remains liable for assessment.

Even if a married woman should subscribe for stock and only pay in a part of the par value, she might be assessed with other stockholders and be obliged to pay, because *her obligation is created by statute of the United States.* The element of power to contract might enter into such a case, perhaps, but in the case at bar the stock was bequeathed to Mrs. Christopher and transferred to her on the books, and she "received and accepted" it, as she avers in her plea. Her obligation, in this instance particularly, is *created by the acts of Congress and not by any law of Florida.*

McDonald *vs.* Thompson, 184 U. S., 71, 73, 74.

Aldrich *vs.* Campbell, 97 Fed., 663.

A married woman is liable to assessment whether her stock was bought by her or bequeathed to her.

Witters *vs.* Sowles, 32 Fed., 767; 35 Fed., 640; 38 Fed., 700; 39 Fed., 403.

Kerr *vs.* Urie (Ind.), 37 Atl. Rep., 789.

Keyser *vs.* Hitz, 133 U. S., 139.

The national banking laws are constitutional, and the State can exercise no control over national banks nor in anywise affect their operation, except in so far as Congress may see proper to permit.

The State statute imposing a penalty for usury does not affect a national bank located in the State.

Farmers' and Mechanics' National Bank *vs.* Dearing, 91 U. S., 29.

Whenever the will of the nation intervenes exclusively in this class of cases the authority of the State retires and lies in abeyance until a proper occasion for its exercise shall recur.

Gilman *vs.* Philadelphia, 3 Wall., 713.

Ex parte McNiel, 13 Wall., 240.

The judgment of the Comptroller is conclusive as to the necessity for and amount of the assessment.

Zane on Banking, p. 112.

Casey *vs.* Galli, 94 U. S., 673.

One who allows himself represented on the books of the bank as owner of stock will not be heard to dispute liability.

Zane, p. 82.

See 99 U. S., 628.

The obligation of stockholder to pay assessment is created by statute.

McDonald *vs.* Thompson, 184 U. S., 71.

Vol. 3, G. & T. Notes, pp. 695 and 701.

Secs. 5151 and 5234, R. S.

The case of Easton *vs.* Iowa, 188 U. S., 220, is in point, to the effect: "National banks are instrumentalities of the Federal Government, created for a public purpose, and as such, necessarily subject to the paramount authority of the United States."

Again says the court, p. 238: "Our conslusions, upon principle and authority, are that Congress, having power to create a system of national banks, is the judge as to the extent of the powers which should be conferred upon such banks, and has the sole power to regulate and control the exercise of their operations."

Again: "It is not competent for State legislatures to interfere, whether with hostile or friendly intentions, with national banks," etc.

So a State is without lawful power to make special laws of a criminal or civil nature "applicable to banks organized and operating under the laws of the United States."

Our highest court says this matter is controlled by the national banking act, and under that Mrs. Christopher is liable for this assessment, and, being liable, she can be sued for it and a judgment can be recovered against her and enforced as any other judgment against any other person.

The findings of fact and law, p. 11 of record, by the lower court (a jury being waived) was eminently correct and, in truth, could not have been otherwise.

It is settled by the Supreme Court of the United States, in the case of Keyser *vs.* Hitz (133 U. S., 138), that a married woman, notwithstanding her disability under the common law, if she is authorized to own national bank stock, is liable to a judgment for an assessment levied upon her stock. It is also held that while a married woman who does not know that stock has been conveyed or assigned to her would not be liable to an assessment, yet, where she knows of the assignment and accepts it, she is liable. It is familiar law that the actual owner of the stock is liable for the assessment, whether the transfer has been made upon the books of the bank or not. It follows, therefore, that unless the laws of Florida absolutely prohibit married women from owning national bank stock, a judgment can be entered against Mrs. Christopher on the assessment. It appears by the pleas, as well as the evidence, that this stock was willed to her and that she "has received and accepted it." It cannot be demonstrated that any law in Florida prohibits a married woman from owning national bank stock.

The coverture of Mrs. Christopher does not prevent the receiver from recovering judgment against her, and her liabili-

ties depend on the statutes of the United States, and so does the right of the receiver to sue her at law and recover.

Keyser *vs.* Hitz, 133 U. S., 138 and 150.
Witters *vs.* Sowles, 32 Fed. R., 130.
Anderson *vs.* Line, 14 Fed. R., 405.
Witters *vs.* Sowles, 35 Fed. R., 640.
Re 1st National Bank St. Albans, 49 Fed. R., 120.
Kerr *vs.* Uric, 38 L. R. A., 121.
Boone on the Law of Banking, secs. 316, 317, and note.

The case of Robinson *vs.* Turrentine (59 F. R., 554, 558) furnishes a full discussion of the subject and authorities and is directly in point.

See also *In re* First National Bank of St. Albans, 49 F. R., 120, and Bundy *vs.* Cocke, 128 U. S., 185; Zane on Banking, 77, 674; sec. 5151, R. S. U. S.; Hobart *vs.* Johnson, 8 F. R., 493; 5 Enc. Law and Procedure, 576, 577, and 578.

IV.

A MARRIED WOMAN MAY OWN STOCK IN A NATIONAL BANK, AND SHE THEREBY BECOMES A SHAREHOLDER AND LIABLE TO ASSESSMENT BY THE COMPTROLLER, AND TO BE SUED THEREFOR AT LAW IN THE UNITED STATES COURT IN FLORIDA.

We submit that counsel for plaintiff in error has failed to cite a single case to the contrary of this proposition. All the cases hold the defense urged in this case and set up by pleas of defendants below, to which demurrer was sustained, is not a good defense.

All the text-writers sustain the proposition above announced by defendant in error, plaintiff below.

No exceptions or qualifications are asserted by the authorities such as counsel for plaintiffs in error contend for.

Just what is held in Keyser *vs.* Hitz., 133 U. S., 138, is the recognized law wherever there is no prohibition against a

married woman owning and holding stock in a national bank.

If this law did not apply to common-law States, it would seem some case could be found so holding. On the contrary, it is conceded the statute of North Carolina comes nearer prohibiting such ownership than any law in Florida, yet we have the case of Robinson *vs.* Turrentine, 59 F. R., 554, directly in point here, and I refer to that case for the argument completely answering counsel in this case.

I shall not venture to follow the fancied discriminations and ingenious reasoning of counsel, as he endeavors to show the *unsoundness* of the law. The law is settled. I simply ask the court to refer to the following authorities, showing we have not overstated the situation as to the decisions and authorities:

Keyser *vs.* Hitz., 133 U. S., 138.
Witters *vs.* Sowles, 38 F. R., 700.
Witters *vs.* Sowles, ex'r, *et al.*, 32 F. R., 130.
Witters *vs.* Sowles and Wife, 32 F. R., 767.
Witters *vs.* Sowles and Wife, 35 F. R., 640.
Robinson *vs.* Turrentine, 59 F. R., 554.
Anderson *vs.* Line, 14 F. R., 405.
In re First National Bank of St. Albans, 49 F. R.,120.
Price, rec., *vs.* Abbott, 17 F. R., 506.
Yardley *vs.* Dickson, 47 F. R., 835.
Brown *vs.* Smith, 88 F. R., 565.
Bundy, rec., *vs.* Cocke, 128 U. S., 185.
Kennedy *vs.* Gibson, 8 Wall., 498.
McCullough *vs.* State of Md., 4 Wheat., 316; 19 Blatch., 359.

Text-writers:

Smith on Receivers, 441, note 3.
Ib., pp. 100 and 101, Appendix.
Boone on the Law of Banking, secs. 316 and 317 and note, and 364 and note.
Ib. (5th ed.), sec. 250.
Zane on Banks and Banking, pp. 77 and 674.
Cook on Corporations, sec. 250, vol. 1, p. 544.

Encyclopedias:

5 Cyclopedia of Law and Procedure, pp. 576, 577, and 578, under head "Banks and Banking."

21 Am. and Eng. Ency. Law, p. 341 and note 4, 2d ed. (and authorities there cited).

1, G. & T. Notes, p. 933 and authorities.

Counsel concedes, practically, in his argument that a married woman in Florida may own and hold stock in a national bank. He undertakes to show that this does not make her a shareholder. No such nice distinction is drawn by the Supreme Court in Keyser *vs.* Hitz, when the court says expressly, "if she is not incapacitated from becoming the owner of stock," she becomes a shareholder and is liable in an action of this kind. The only condition of liability which the Supreme Court recognizes is that of her capacity to own and hold stock at all. If she can do that, she is a shareholder within the meaning of the statute, and is liable under the statute, and may be sued at law just precisely as any other shareholder. A married woman, under the laws of Florida, is permitted to own stock in a national bank—is permitted to become a shareholder, therefore—and she is, therefore, liable to assessment as a shareholder, and the remedy is the same against her as against other shareholders. Her liability is the same, and the remedy or method of procedure is the same.

True, infants and idiots may own stock, and they become shareholders when they do, but they, together with executors and administrators, or rather their guardian, committee, trustee and the like, come within sec. 5152, R. S. No law in Florida makes it necessary for a married woman to have a trustee, guardian or committee. On the contrary, she is especially vested with her statutory property. She may have an equitable estate in property, and may have a trustee in that connection, but property of the kind in question here is her separate statutory property, and there can be no interven-

tion of a trustee or any other agency or representative. If a court of equity, in a proper case, should seize it, that would be accomplished through a receiver. She can hold and own the stock, and that, the Supreme Court says, makes her a shareholder, and if she is a shareholder, she is liable for this assessment, and the remedy is action at law—just as it would be against any shareholder—and this by virtue of the act of Congress. Counsel says the State statute of limitations could be pleaded by a shareholder. That may be, but I apprehend if the act of Congress provided for limitations as to such action that would control, and not the State law, as to such limitation.

Counsel's argument leads to this: A married woman may own such stock, she may receive dividends on it, she may exercise the functions and prerogatives of a shareholder, in Florida, but, because she is under disability as to contracts, she cannot be held liable as other shareholders, notwithstanding the act of Congress to that effect, and she can't be sued at law at all; therefore, if she is liable, the liability cannot be enforced, unless it be by suit in equity, and in such a case the receiver could only look to the particular property, to wit, the bank stock, and subject it to the payment of that liability. This, of course, is worse than worthless. Consequently, so long as the bank pays dividends, she can receive them, but when that other contingency arises, as provided for by act of Congress, she can fall back upon her disabilities to contract and escape the consequence of her ownership of that property, the benefits of which she has enjoyed. The courts do not agree to the soundness of this argument.

When the assessment is for the full amount provided by statute, the remedy is at law.

8 Wall., 498.

Even if we proceeded in equity here, we could only look to the stock itself, if we concede that we are controlled by the constitution and laws of Florida as to procedure.

But this whole subject is regulated by Congress. The liability arises under the act of Congress. The liability being fixed, the method of enforcing it against one shareholder being the same as to all others, no exceptions being recognized, we must proceed in that way.

4 Wheat., 316.

So all the cases hold, so all the authorities lay it down. There is absolute unanimity of authority on these particular questions. We need not indulge in suppositions as to what would be held in the case of an infant or lunatic. We have the case of a married woman holding stock in a national bank, the bank failing, Comptroller ordering full assessment, suit at law against her to recover. Her coverture is no defense. She can be a shareholder, and is, because she can and does own the stock. She is liable as such, no matter what the laws of Florida may be.

The pleas admit defendant received and accepted the stock. They do not deny that she received dividends. The evidence shows that she did, and that she had the stock transferred on the books of the bank to her, and that she joined other stockholders in an application to amend the bank's charter. The case of Keyser *vs.* Hitz alone seems conclusive of the questions here.

The new and latest edition of Cook on Corporations, section 250, vol. 1, pp. 540–544, gives the law: "A person buying stock in a national bank, in the names of his minor children, became liable to assessment as a stockholder * * * the father is liable, even though the child becomes of age after the assessment is made" (p. 541). "A married woman is liable on national bank stock, even though she purchased the stock without the consent of her husband, and the statutes of the State provided that a married woman should not be liable on a contract without such written consent" (p. 544).

See note E, p. 543.

The note 2, p. 544, gives the case (in addition to others) of Kerr *vs.* Urie, 86 Md., 72 (1897), holding that "a married woman living in Maryland and being a stockholder in a national bank in Texas, is liable on the statutory liability, irrespective of the statutes of Texas." This author gives no exceptions to the rule.

We respectfully submit that there is no merit in the assignments of error.

The constitution and laws of Florida do not control the question of the liability of any shareholder of a national bank, male or female, married or unmarried, or the manner of enforcing such liability. The acts of Congress alone determine the matter.

Very recently the subject has been dealt with in Van Reed *vs.* People's National Bank, 25 Sup. Ct. Rep., 775 (May 29, 1905), wherein this court affirms its previous decision in Pacific Nat. Bank *vs.* Mixter, 124 U. S., 721, Mr. Justice Day saying in part:

> "The right of Congress to determine to what extent a State court shall be permitted to entertain actions against national banks, and how far these institutions shall be subject to State control, is undeniable. National banks are quasi-public institutions, and for the purpose for which they are instituted are national in their character and within constitutional limits are subject to the control of Congress, and are not to be interfered with by State legislative or judicial action, except so far as the law-making power of the Government may permit."

There was no error in affirming the judgment of the circuit court.

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